

ALEX G. TSE (CABN 152348)
Acting United States Attorney
SARA WINSLOW (DCBN 457643)
Chief, Civil Division
PAMELA T. JOHANN (CABN 145558)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7025
FAX: (415) 436-6748
pamela.johann@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TOLOWA NATION,)	Case No. 17-cv-06478-RS
)	
Plaintiff,)	STIPULATED PROPOSED BRIEFING
)	SCHEDULE AND REQUEST TO VACATE
v.)	INITIAL CASE MANAGEMENT
)	CONFERENCE AND REMOVE CASE FROM
UNITED STATES; UNITED STATES)	ADR MULTI-OPTION PROGRAM;
BUREAU OF INDIAN AFFAIRS; RYAN)	PROPOSED ORDER
ZINKE, Secretary of the Interior; JOHN)	
TAHSUDA, Acting Assistant Secretary –)	
Indian Affairs,)	
)	
Defendants.)	

The parties, through their undersigned attorneys, hereby jointly submit this proposed schedule for briefing of the parties' anticipated cross-motions for summary judgment. The parties further request that the Court vacate the Case Management Conference set for May 17, 2018 and remove the case from the ADR Multi-Option Program. This stipulated request is based on the accompanying Declaration of Pamela T. Johann and the following facts:

1. Plaintiff's complaint seeks judicial review on an administrative record pursuant to 5 U.S.C. § 706 (the Administrative Procedures Act). The Court's role is limited to a review of the administrative record. As such, the parties are exempt from initial disclosures under Federal Rule of

1 Civil Procedure 26(a)(1)(B)(i), and discovery is not available in this matter.

2 2. The parties have been meeting and conferring regarding the compilation of the
3 administrative record and have agreed upon a procedure and timetable for the transmittal of the
4 administrative record to Plaintiff. Because of the anticipated size of the administrative record and the
5 fact that parts of it are protected from disclosure under the Privacy Act and subject to a stipulated
6 Protective Order entered by this Court on May 1, 2018, ECF No. 31, the parties have agreed that they
7 will file an appendix containing only the cited portions of the administrative record following the
8 briefing of the summary judgment motions, as set forth below. The parties have agreed that the date by
9 which Federal Defendants shall compile and certify the administrative records, file a notice of
10 certification, and lodge the administrative record with the Plaintiff shall be June 4, 2018.

11 3. The parties have further met and conferred regarding the briefing schedule for the cross
12 motions for summary judgment and hereby jointly propose and stipulate to the following:

- 13 a. Last day for Plaintiff to file Motion for Summary Judgment: August 6, 2018, not to
14 exceed 35 pages.
- 15 b. Last day for Defendants to file Opposition and Cross Motion for Summary Judgment:
16 September 17, 2018, not to exceed 35 pages.
- 17 c. Last day for Plaintiff to file Reply and Cross-Opposition: October 15, 2018, not to
18 exceed 25 pages.
- 19 d. Last day for Defendants to file Cross-Reply November 13, 2018, not to exceed 25
20 pages.
- 21 e. Last day for parties to file Joint Appendix containing the portion of the administrative
22 record cited in the briefing: November 26, 2018.
- 23 f. Hearing on Cross Motions for Summary Judgment: December 20, 2018.

24 4. Because this matter involves only a review of the administrative record, it can be fully
25 resolved by the cross motions for summary judgment. The parties therefore request that the Court
26 vacate the Case Management Conference scheduled for May 17, 2018 and that the parties be relieved
27 from the requirement of submitting a Case Management Statement.

1 5. In the alternative, if the Court wishes the parties to appear for a case management
2 conference, the parties request that the conference be continued to June 14, 2018. Counsel for Plaintiff
3 is currently scheduled to be in trial in the Sacramento County Superior Court, beginning May 15, 2018.

4 6. The parties further report that they have met and conferred regarding whether the case
5 might benefit from any of the available dispute resolution options provided in this district and have
6 agreed that referral to an ADR process is unlikely to be beneficial because this action is limited to
7 Plaintiff's request for judicial review on an administrative record. Given the substance of the action and
8 the relief sought, it appears at this time that ADR is unlikely to aid in the resolution of this case and may
9 unnecessarily consume the Court's time and resources. Accordingly, pursuant to ADR L.R. 3-3(c), the
10 parties hereby stipulate and jointly request that the case be removed from the ADR Multi-Option
11 Program and that they be excused from participating in the ADR phone conference scheduled for May
12 15, 2018, and any further formal ADR process. If any party subsequently determines that submission to
13 the formal ADR process would be beneficial to the efficient resolution of this matter, that party may
14 request placement in one of the Court's ADR programs at that time.

15 7. In accordance with Civil Local Rule 5(i)(3), the filer of this document attests that all
16 signatories listed below concur in the filing of this document.

17 DATED: May 7, 2018

Respectfully submitted,

18 ALEX G. TSE
19 Acting United States Attorney

20 /s/ Pamela T. Johann
PAMELA T. JOHANN
Assistant United States Attorney

21 Attorneys for Federal Defendants

22 DATED: May 7, 2018

23 THE SMITH FIRM

24 /s/ Kelly T. Smith
25 KELLY T. SMITH

26 Attorneys for Plaintiff Tolowa
27 Nation

~~PROPOSED~~ ORDER

Pursuant to the stipulation of the parties, and good cause having been shown, it is hereby ordered that:

1. The Case Management Conference set for May 17, 2018, is hereby vacated, and the parties are relieved from the obligation to file a Joint Case Management Statement;

2. Pursuant to ADR L.R. 3-3(c), the parties are hereby removed from the ADR Multi-Option Program and are excused from participating in the ADR phone conference and any further formal ADR process. Should any party subsequently determine that submission to the formal ADR process would be beneficial to the efficient resolution of this matter, that party may request placement in one of the Court's ADR programs at that time.

3. The parties shall adhere to the following briefing schedule and page limits for the anticipated cross-motions for summary judgment:

- a. Last day for Plaintiff to file Motion for Summary Judgment: August 6, 2018, not to exceed 35 pages.
- b. Last day for Defendants to file Opposition and Cross Motion for Summary Judgment: September 17, 2018, not to exceed 35 pages.
- c. Last day for Plaintiff to file Reply and Cross-Opposition: October 15, 2018, not to exceed 25 pages.
- d. Last day for Defendants to file Cross-Reply November 13, 2018, not to exceed 25 pages.
- e. Last day for parties to file Joint Appendix containing the portion of the administrative record cited in the briefing: November 26, 2018.
- f. Hearing on Cross Motions for Summary Judgment: December 20, 2018.

IT IS SO ORDERED.

DATED: 5/8/18


THE HON. RICHARD SELBORG
United States District Judge